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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR 30 2007

T: EP: RA

Legend:

Taxpayer A=

Individual B =

Individual C =

Company D =

Amount H =

IRA X =

IRA Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This is in response to your letter dated February 7, 2007, as supplemented by additional correspondence dated April 12, 2007, submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age represents that she received a distribution of Amount H from Company D on or around Date 4, as the named beneficiary of IRA X. Taxpayer asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to her mental state following the death of her spouse and lack of understanding with respect to the IRA distribution to her.

Individual B, the deceased spouse of Taxpayer A, died unexpectedly on Date 1. Prior to his death he managed the household finances and several personal investment accounts, including IRA X. His untimely death did not afford him the opportunity to go over personal affairs with Taxpayer A. After Individual B's death, Taxpayer A sought the advice of Individual C, who is a licensed C.P.A. and a family friend. On Date 2 Individual C prepared a detailed letter to Taxpayer A, instructing her to request a lump sum distribution of IRA X which would be rolled over into another IRA in her name. This letter indicated that they would have 60 days to complete the rollover. On Date 3, Taxpayer A received a letter from Company D that expressed their condolence for her loss and informed her that a check for Amount H would be sent to her under separate cover. Taxpayer A received Amount H from Company B on Date 4. Company B did not indicate that the check represented a distribution from IRA X. Individual C was not available to advise Taxpayer A because he was serving two weeks National Guard Duty. Without a full understanding of the distribution and without the advice of Individual C, Taxpayer A deposited Amount H into her personal savings account on Date 5. Approximately two weeks after the expiration of the 60 day rollover period, Individual C, while reviewing Taxpayer A's records, discovered that the distribution of Amount H from IRA X had been deposited into a non-IRA account. On Date 6, Taxpayer deposited Amount H into IRA Y.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount H.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

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The information presented and documentation submitted by Taxpayer A indicates the confusion surrounding the distribution from IRA X. It was not clear to Taxpayer A that the distribution was from IRA X, and her financial advisor was not available to advise her. After his return, Amount H was deposited into IRA Y.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts H. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met Amount H which was contributed to IRA Y will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____, I.D. # _____ at () _____

Sincerely yours,

for *Ada Perry*
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose, Notice 437